

# EXHIBIT 2

174 FERC ¶ 61,160  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
Neil Chatterjee, James P. Danly,  
Allison Clements, and Mark C. Christie.

TransWest Express LLC

Docket No. ER21-645-000

ORDER GRANTING APPLICATION FOR AUTHORIZATION TO CHARGE  
NEGOTIATED RATES, SUBJECT TO CONDITION, AND GRANTING WAIVERS

(Issued February 26, 2021)

1. On December 11, 2020, as amended on February 5, 2021, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and part 35 of the Commission's regulations,<sup>2</sup> TransWest Express LLC (TransWest) submitted an application for authority to sell transmission service rights at negotiated rates on the TransWest Express Transmission Project (TWE Project). TransWest also requests Commission approval of its proposed initial capacity allocation process, whereby TransWest intends to allocate up to 100% of the capacity of the TWE Project pursuant to an open solicitation. In addition, TransWest requests waiver of certain Commission filing requirements. In this order, we grant TransWest's request to sell transmission capacity at negotiated rates, accept the proposed capacity allocation process, subject to submission of a post-allocation compliance filing, and grant TransWest's request for waivers.

**I. Background**

2. TransWest is a wholly-owned affiliate of the Anschutz Corporation (Anschutz), a privately held company based in Denver, Colorado. TransWest was formed to develop the TWE Project.<sup>3</sup>

3. The TWE Project is an overhead high-voltage transmission system that will extend 732 miles from Wyoming to Nevada and will interconnect to existing bulk power system

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> 18 C.F.R. pt. 35 (2020).

<sup>3</sup> Transmittal at 3-4.

facilities in Wyoming, in Utah, and at two locations in Nevada.<sup>4</sup> The TWE Project will consist of three linked segments that include: (1) a 405-mile, 3,000 MW, 500 kV high-voltage direct current (HVDC) system between Wyoming and Utah; (2) a 278-mile, 1,500 MW, 500 kV high-voltage alternating current (HVAC) transmission line between Utah and Nevada; and (3) a 49-mile, 1,680 MW, 500 kV HVAC transmission line in Nevada. The TWE Project will have interconnection points at the ends of each of the three linked segments where the TWE Project will interconnect to the existing bulk power system facilities.<sup>5</sup>

4. The TWE Project's 405-mile HVDC segment will include terminals located near Sinclair, Wyoming (Wyoming Terminal) and Delta, Utah (Utah Terminal). At the Wyoming Terminal, the TWE Project will interconnect to PacifiCorp's Wyoming 230 kV and 500 kV transmission systems. At the Utah Terminal, the TWE Project will interconnect to the Intermountain Power Agency's Intermountain Power Project at its 345 kV Switchyard. The TWE Project's 278-mile HVAC segment will extend from the Utah Terminal to an interconnection with NV Energy's Crystal 500 kV Substation and Desert Link's Harry Allen to Eldorado 500 kV line northeast of Las Vegas, Nevada. From there, a 49-mile HVAC segment could interconnect with the 500 kV transmission facilities in the Eldorado Valley southwest of Boulder City, Nevada owned by Southern California Edison Company (SoCal Edison), the Western Area Power Administration (Western),<sup>6</sup> Arizona Public Service Company, the Los Angeles Department of Water and Power, NV Energy and others. These facilities include the Eldorado Substation, the McCullough Substation, and the Mead-Marketplace transmission line. Currently, TransWest has an interconnection request pending with SoCal Edison for the Eldorado Substation.

5. TransWest asserts that the TWE Project is essentially a shovel-ready project, able to start construction in 2022, subject to the negotiation of agreements with the initial

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<sup>4</sup> *Id.* at 4. TransWest states that it is not submitting a rate schedule for the TWE Project at this time and does not own any other facilities subject to the Commission's jurisdiction under the FPA; therefore, Commission action on this filing does not make TransWest a public utility. *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 5. TransWest notes that Western has been a partner in the development of the TWE Project. Western and TransWest entered into a Development Agreement in September 2011 that was amended in March 2019. Under the amended Development Agreement, Western has the right to own 25% of the all-digital fiber communications system on the TWE Project and an option to own one percent of the transmission capacity. *Id.* at 6.

customers. TransWest states that it anticipates that the first elements of the TWE Project can be placed in service potentially as early as the end of 2024.<sup>7</sup>

6. TransWest states that it is affiliated with another Anschutz wholly-owned affiliate, Power Company of Wyoming LLC (PCW), which is developing a 3,000 MW wind farm located in Carbon County, Wyoming (PCW Project).

## **II. Notice and Responsive Pleadings**

7. Notice of TransWest's filing was published in the *Federal Register*, 85 Fed. Reg. 83,071 (Dec. 21, 2020), with interventions and protests due on or before January 4, 2021. None was filed. Notice of TransWest's February 5, 2021 amendment was published in the *Federal Register*, 86 Fed. Reg. 9330 (Feb. 12, 2021), with interventions and protests due on or before February 12, 2021. None was filed.

## **III. Discussion**

### **A. Negotiated Rate Authority**

8. In evaluating negotiated rate applications, the Commission employs a four-step analysis outlined in *Chinook* to examine: (1) the justness and reasonableness of the rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including affiliate preference; and (4) regional reliability and operational efficiency requirements.<sup>8</sup> This approach, which was further developed in the 2013 Policy Statement,<sup>9</sup> simultaneously acknowledges the financing realities faced by merchant transmission developers, the mandates of the FPA, and the Commission's open access requirements. Moreover, this approach allows the Commission to use a consistent framework to evaluate requests for negotiated rate authority from a wide range of merchant transmission projects that can differ substantially from one project to the next.

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<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 37 (2009) (*Chinook*).

<sup>9</sup> *Allocation of Capacity on New Merchant Transmission Projects and New Cost Based, Participant-Funded Transmission Projects; Priority Rights to New Participant Funded Transmission*, 142 FERC ¶ 61,038 (2013) (2013 Policy Statement).

## 1. Factor One: Just and Reasonable Rates

9. To approve negotiated rates for a transmission project, the Commission must find that the rates are just and reasonable.<sup>10</sup> In determining whether negotiated rates will be just and reasonable, the Commission considers whether the merchant transmission developer has assumed the full market risk for the cost of constructing its proposed project and is not building within the footprint of the developer's (or an affiliate's) traditionally-regulated system. In such a case, there are no captive customers who would be required to pay the costs of the project. The Commission also considers whether the developer or an affiliate already owns transmission facilities in the region where the project is to be located, what alternatives customers have, whether the developer is capable of erecting any barriers to entry among competitors, and whether the developer would have any incentive to withhold capacity.<sup>11</sup>

### a. TransWest's Proposal

10. TransWest states that it has assumed and will continue to assume the full financial risk for the TWE Project. In addition, TransWest avers that neither it nor its affiliates own any other electric transmission system or traditionally regulated transmission system with captive customers that would be required to pay the costs of the TWE Project.<sup>12</sup>

11. TransWest states that TWE Project will interconnect with existing transmission systems in Wyoming, Utah, and Nevada, and potential transmission customers will have alternative sources of transmission service on any or all of those existing systems, whose incumbent owners could serve the same customers as TransWest under an Open Access Transmission Tariff (OATT) with a duty to expand under cost-based rates. TransWest asserts that this potential for expansion exerts downward pressure on the negotiated transmission rates of the new merchant transmission developer.<sup>13</sup> In addition, TransWest observes that the Zephyr Power Transmission, LLC (Zephyr) project also has a transmission path from southern Wyoming to the Desert Southwest, for which the Commission has already approved negotiated rates.<sup>14</sup> TransWest contends that, because Zephyr or another transmission developer could elect to build a transmission project

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<sup>10</sup> *Chinook*, 126 FERC ¶ 61,134 at P 37; *Champlain Hudson Power Express, Inc.*, 132 FERC ¶ 61,006, at P 17, (2010).

<sup>11</sup> *Chinook*, 126 FERC ¶ 61,134 at P 38.

<sup>12</sup> Transmittal at 11-12.

<sup>13</sup> *Id.* at 12 (citing *Chinook*, 126 FERC ¶ 61,134 at P 58).

<sup>14</sup> *Id.* (citing *Chinook*, 126 FERC ¶ 61,134 at PP 2, 57).

servicing the same customer needs as the TWE Project, potential customers would only purchase transmission service from TransWest to the extent it is cost-effective.

12. TransWest asserts that, instead of erecting barriers to entry or limiting customer options, the TWE Project will expand transmission opportunities for transmission customers. First, TransWest states that, prior to commencing service, TransWest will file an OATT with the Commission that will provide third parties with a transparent and uniform practice for requesting electrical interconnection and transmission service for all remaining capacity, if any, after the initial subscriptions. These practices will include the procedures for requesting expansion of the TWE Project to accommodate such requests. Second, TransWest asserts that all customers with transmission rights will retain firm tradeable secondary rights with respect to their contracted capacity. Finally, TransWest contends that it will maintain an Open Access Same-Time Information System to ensure uniformity of customer treatment. TransWest avers that it cannot erect barriers to entry in the relevant markets, nor would it have an incentive to withhold capacity.<sup>15</sup>

**b. Commission Determination**

13. Based on the information provided in its request for negotiated rate authority, we find the TransWest's request for authorization to charge negotiated rates on the TWE Project satisfies the first *Chinook* factor. TransWest will bear the full market risk for the cost of constructing the TWE Project, will operate the TWE Project on a merchant transmission basis, and will only recover costs from customers awarded transmission capacity from the anchor customer or through open solicitations. We note that TransWest has no captive customers, and that it and its affiliates do not operate transmission in the areas where the TWE Project is located. Therefore, we find that TransWest and its affiliates have no ability to erect barriers to entry and have no incentive to withhold capacity. Accordingly, we find that TransWest satisfies the first factor of our negotiated rate analysis.

**2. Factor Two: Undue Discrimination**

14. To prevent undue discrimination when granting merchant transmission owners negotiated rate authority, the Commission has considered: (1) the terms and conditions of a merchant transmission developer's open season; and (2) its tariff commitments (or in the case of an interconnection with a regional transmission organization (RTO) or an independent system operator (ISO), its commitment to turn over operational control to that regional entity).<sup>16</sup> The 2013 Policy Statement provides an alternative to conducting a

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<sup>15</sup> *Id.* at 13 (citing *SunZia Transmission, LLC*, 135 FERC ¶ 61,169, at P 22 (2011)).

<sup>16</sup> *Chinook*, 126 FERC ¶ 61,134 at P 40.

formal open season, allowing a developer to demonstrate no undue discrimination or preference by conducting an open solicitation that complies with the requirements of the 2013 Policy Statement.<sup>17</sup> Specifically, the developer must: (1) broadly solicit interest in the project from potential customers; and (2) after the solicitation process, demonstrate to the Commission that it has satisfied the solicitation, selection, and negotiation process criteria set forth in the 2013 Policy Statement.<sup>18</sup>

15. In the 2013 Policy Statement, the Commission stated that applicants must issue broad notice of the project in a manner that ensures that all potential and interested customers are informed of the proposed project, such as by placing notice in trade magazines or regional energy publications.<sup>19</sup> Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including the following: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).<sup>20</sup> The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may also adopt a specific set of objective criteria it will use to rank prospective customers, provided it can justify why such criteria are appropriate. Finally, the Commission expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.<sup>21</sup>

16. Additionally, in the 2013 Policy Statement, the Commission stated that merchant transmission developers must disclose the results of their capacity allocation process. The merchant transmission developer's disclosure would be part of the Commission's approval of the capacity allocation process and thus noticed and acted upon under section 205 of the FPA. Developers must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the 2013 Policy Statement and the Commission's open access principles. Specifically, the developer should describe the criteria that were used to select customers, any price terms, and any risk-sharing terms and conditions that

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<sup>17</sup> 2013 Policy Statement, 142 FERC ¶ 61,038 at PP 15, 23.

<sup>18</sup> *Id.* P 16.

<sup>19</sup> *Id.* P 23.

<sup>20</sup> *Id.* P 20.

<sup>21</sup> *Id.* PP 24-27.

served as the basis for identifying transmission customers selected versus those that were not, as well as provide certain information listed in the 2013 Policy Statement in order to provide transparency to the Commission and interested parties.<sup>22</sup>

17. In the 2013 Policy Statement, the Commission emphasized that the information in the post-selection demonstration is an essential part of a merchant transmission developer's request for approval of a capacity allocation process, and that the developer will have the burden to demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.<sup>23</sup> The Commission allows developers discretion in the timing of requests for approval of capacity allocation processes. For example, a developer can seek approval of its capacity allocation approach after having completed the process of selecting customers in accordance with Commission policies. Alternatively, a developer can first seek approval of its capacity allocation approach, and then can demonstrate in a compliance filing filed in response to the Commission's order approving that approach that the developer's selection of customers was consistent with the approved selection process.

**a. TransWest's Proposal**

18. TransWest states that it will conduct an open solicitation process that will fully satisfy the second *Chinook* factor as modified by the 2013 Policy Statement. TransWest asserts that it has already engaged in extensive outreach to inform potential customers about the TWE Project, and that outreach remains ongoing.<sup>24</sup> TransWest states that it plans to commence the open solicitation process on or shortly after March 1, 2021,<sup>25</sup> and TransWest will allocate up to 100% of the TWE Project's transmission capacity via that process.

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<sup>22</sup> *Id.* P 30.

<sup>23</sup> *Id.* P 32.

<sup>24</sup> Transmittal at 15-17.

<sup>25</sup> TransWest requests that the Commission issue an order granting its request by February 15, 2021, asserting that issuance of a Commission order by that date will facilitate commencement of the open solicitation shortly after March 1, 2021, the subsequent formal negotiations with potential transmission customers, and the timely start of construction. *Id.* at 2.



19. TransWest asserts that it has retained PA Consulting as an Independent Solicitation Manager (ISM), to run the open solicitation process.<sup>26</sup> According to TransWest, the ISM's responsibilities will include: (1) widely publishing the notice of open solicitation; (2) managing the TWE Project Open Solicitation website; (3) providing project and process information to interested parties; (4) screening potential customers based on the previously disclosed eligibility criteria; (5) ranking eligible customers based on previously disclosed ranking criteria; and (6) preparing a comprehensive post-allocation disclosure report to the Commission for inclusion in TransWest's compliance filing.<sup>27</sup>

20. TransWest states that the open solicitation will be conducted in three steps. In the first step, TransWest and the ISM will broadly solicit interest in the TWE Project from potential customers by issuing a notice announcing the open solicitation and seeking Statements of Interest from entities meeting certain eligibility criteria. TransWest asserts that this notice will include a link to the TWE Project Open Solicitation website managed by the ISM and will contain all of the information required by the 2013 Policy Statement, including points of contact for the ISM and TransWest, project size/capacity, end points of the line, projected construction and/or in-service dates, technical specifications, how TransWest will address potential oversubscription of capacity, and the criteria it plans to use to select transmission customers, with additional detail provided on the Open Solicitation website. TransWest states that it and the ISM will actively publicize the open solicitation to parties that they believe might be interested in participating and attempt to market the open solicitation by providing the notice for distribution to the Wyoming Energy Authority, the Utah Governor's Energy Office, trade journals, regional energy publications, the TWE Project website, emails to developer's contacts, and other publications and entities as appropriate, including but not limited to news outlets and regional planning and reliability groups. In addition, TransWest states that the notice will provide a link to a Statement of Interest form available on a page regarding the TWE Project Open Solicitation, and interested parties will be required to submit their completed Statement of Interest forms within 60 days after the notice is posted.<sup>28</sup>

21. TransWest explains that the open solicitation will include the following two primary long-term firm transmission service product offerings: (1) 1,500 MW Wyoming

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<sup>26</sup> *Id.* at 18 (citing *Linden VFT, LLC*, 162 FERC ¶ 61,297, at P 31 (2018); *S. Cross Transmission*, 157 FERC ¶ 61,090, at P 30 (2016); *MATL LLP*, 166 FERC ¶ 61,051, at P 28 (2019)).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 18-19.

to Utah point-to-point service; and (2) 1,500 MW Wyoming to Nevada service.<sup>29</sup> TransWest asserts that it is likely that the initial capacity allocation will include either the full or near-full subscription of the Wyoming to Utah product or the full or near-full subscription of both primary products. TransWest states that the eligibility criteria will include:<sup>30</sup> (1) readiness to commit, i.e., the customer's commitment to pursue a customer agreement within TransWest's designated negotiation window as set forth in the notice; (2) commitment to pay a non-refundable deposit upon execution of a customer agreement; (3) a firm transmission service request for at least 300 MW of capacity of either primary product for at least 20 years; (4) the ability of the entity to directly interconnect to a TWE Project interconnection point or interconnection with a third-party system, and the ability to secure third-party firm transmission service on an existing transmission system to deliver to or receive from a TWE Project interconnection point; and (5) an investment-grade credit rating or alternative evidence of creditworthiness.<sup>31</sup>

22. TransWest states that, in the second step, the ISM will screen the Statements of Interest against the eligibility criteria to determine eligibility for the third step of the open solicitation process. During the screening process, if the ISM determines that an entity is ineligible due to failure to satisfy the published eligibility criteria, then the ISM will notify the entity regarding the eligibility criteria it does not appear to satisfy and the entity will be given a limited opportunity to provide additional information to demonstrate that it satisfies the criteria. TransWest states that, once the ISM determines all eligible entities, the ISM will rank eligible entities using the following set of objective criteria: (1) Level of Creditworthiness: Reduction in counterparty risks by entering into contracts with customers with the highest level of creditworthiness and/or credit support; (2) Larger Capacity Reservations: Maximize support for the full project by executing larger capacity reservations that utilize the HVDC segment and one or two of the linked HVAC segments; (3) Longer Term of Service: Securing of long-term revenues by obtaining customer commitments with longer terms; (4) Project Risk-Sharing: Ability to provide financial commitments during the TWE Project development cycle and the term of any customer agreement; (5) Access to TWE Project Substation: Reduction of the risk that customers will not be able to access the TWE Project by selecting customers that can directly interconnect to a TWE Project interconnection point or have secured

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<sup>29</sup> *Id.* at 19.

<sup>30</sup> In its February 5, 2021 amendment, TransWest removed from its application a previously proposed eligibility criterion related to a generator's project development status. February 5, 2021 Amendment at 4-5.

<sup>31</sup> Transmittal at 20 (citing *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098, at PP 20, 23 (2014) (*Grain Belt Express*); *Plains and Eastern Clean Line LLC*, 148 FERC ¶ 61,122, at PP 22, 25 (2014) (*Plains and Eastern*)).

transmission service agreements (TSA) to a TWE Project interconnection point; (6) Generation Customers: Reduction of project-on-project development risk by entering into contracts with customers based upon completion of generation development milestones and generation commercial operation date (under construction or shovel-ready); and (7) Non-Generator Customers: Reduction of development risk by evidence of need for capacity, ability to obtain any required regulatory approvals, and the timing of transmission service commencement date.<sup>32</sup>

23. TransWest explains that these criteria may be weighted differently depending on the needs of the TWE Project.<sup>33</sup> TransWest states that the criteria will be applied in a not unduly discriminatory manner, and that potential customers with identical ranking characteristics will be afforded the same weight for that particular characteristic. TransWest notes that it may be necessary to refine these criteria based on market circumstances, in which case the ISM and TransWest will provide public notice of any changes and apply any changes equally to all potential customers.<sup>34</sup>

24. TransWest states that the third and final step will include phased bilateral negotiations between TransWest and the highest-ranked eligible entities. According to TransWest, these negotiations will take place during a time-defined negotiation window, as provided on the TWE Project Open Solicitation website.

25. TransWest states that it intends to allocate up to 100% of the TWE Project capacity in accordance with the ranking criteria described above. TransWest asserts that it will accord the highest ranking to the largest-capacity customer bids based on the understanding that larger-sized generation resource developments will benefit from larger-scale developments in the absence of any other distinction between prospective customers. Also based on this understanding, TransWest avers that it does not intend to prorate capacities of potential customers if the TWE Project is potentially “oversubscribed” based on eligible expression of interest.<sup>35</sup>

26. TransWest states that the capacity of the three segments described in its filing is the upper limit for each segment for purposes of this capacity allocation process. TransWest asserts that it does not intend to seek to increase the capacity of the TWE

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<sup>32</sup> *Id.* at 21 (citing *Grain Belt Express*, 147 FERC ¶ 61,098 at PP 20, 23; *Plains and Eastern*, 148 FERC ¶ 61,122 at PP 21, 25; *W. Spirit Clean Line LLC*, 155 FERC ¶ 61,252, at PP 24, 28 (2016) (*Western Spirit*)).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 21-22.

<sup>35</sup> *Id.* at 22.

Project as a result of the open solicitation, due to the delays that would result from determining how to expand the project beyond its current configuration in a manner that complies with North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) reliability standards. TransWest states that it commits to file an OATT with the Commission for the TWE Project, based on the Commission's *pro forma* OATT, prior to commencing service.<sup>36</sup>

27. TransWest states that there are no RTOs or ISOs with a footprint that overlaps the path of the TWE Project. Therefore, TransWest cannot turn over operation of its facilities to an RTO or ISO. TransWest asserts that, if in the future the Commission approves an RTO or ISO with a footprint in which the TWE Project will operate, TransWest will engage in good-faith efforts to determine if it is reasonable to join that RTO or ISO.<sup>37</sup>

28. Finally, TransWest states that, once the TWE Project commences operation, TransWest will: (1) ensure that the books and records for the project comply with the Uniform System of Accounts in Part 101 of the Commission's regulations and will be subject to examination as required in Part 41 of the Commission's regulations; and (2) have its books and records audited by an independent auditor.<sup>38</sup>

#### **b. Commission Determination**

29. To satisfy the second *Chinook* factor of the Commission's negotiated rate authority requirements, TransWest must submit the results of any future capacity allocation process and must describe relevant criteria, price terms, and any risk-sharing terms and conditions that were used as the basis for identifying the transmission customers selected, along with other information required by the 2013 Policy Statement, in order to demonstrate that the process was not unduly discriminatory. We note that the TWE Project is not located in a region with an RTO or ISO and, therefore, TransWest must file an OATT with the Commission no later than one year prior to the commencement of service. TransWest must support any deviations from the *pro forma* OATT, and the Commission will evaluate any proposed deviations to ensure that TransWest will provide open and non-discriminatory service on the TWE Project.

30. We find that TransWest's proposed process for allocating capacity on the TWE Project is consistent with the 2013 Policy Statement and will provide potential customers

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<sup>36</sup> *Id.* at 22-23.

<sup>37</sup> *Id.* at 23.

<sup>38</sup> *Id.* (citing 18 C.F.R. pts. 41, 101 (2020); *Western Spirit*, 155 FERC ¶ 61,252 at P 29; *Chinook*, 126 FERC ¶ 61,134 at P 62).

equal opportunity to participate in the open solicitation. Consistent with the requirements of the 2013 Policy Statement, we expect TransWest to update all potential customers of any changes to the configuration of the TWE Project and/or the amount of available capacity. We therefore accept the proposed capacity allocation process and direct TransWest to submit a post-selection report on its open solicitation process demonstrating compliance with the proposed process within 30 days following the close of the open solicitation process. We will reserve judgment on whether that open solicitation was not unduly discriminatory, pending TransWest making a post-selection open solicitation compliance filing within 30 days following the close of the open solicitation process.

### **3. Factor Three: Undue Preference and Affiliate Concerns**

31. In the context of merchant transmission, the Commission's concerns regarding the potential for affiliate abuse arise when the merchant transmission developer is affiliated with any of the anchor customer, participants in the open season or solicitation, or customers that subsequently take service on the merchant transmission line. The Commission expects an affirmative showing that the affiliate is not afforded an undue preference, and the developer bears a high burden to demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of nonaffiliated potential customers is just, reasonable, and not unduly discriminatory or preferential.<sup>39</sup>

#### **a. TransWest's Proposal**

32. TransWest states that it will use the objective criteria and negotiate rates for the initial capacity offering of the TWE Project capacity with affiliates and non-affiliates that submit Statements of Interest to the TWE Project initial capacity allocation. In particular, TransWest asserts that non-affiliates will be offered the same rates, terms, and conditions as any affiliate for similar-length TSAs resulting from the allocation. TransWest further asserts that the terms and conditions for the initial capacity will require sufficient commitments from the transmission customers to fund the initial build-out of the TWE Project, regardless of whether the customer is an affiliate or non-affiliate of TransWest.<sup>40</sup>

33. TransWest states that it has developed the TWE Project as an independent transmission project operated separately and distinctly from PCW, the affiliate company that is developing the PCW Project. TransWest also states that it has and will continue to maintain separate books and records for the TWE Project, independent of its affiliates' books and records. In addition, TransWest contends that the ISM will oversee the open

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<sup>39</sup> 2013 Policy Statement, 142 FERC ¶ 61,038 at P 34.

<sup>40</sup> Transmittal at 24.

solicitation process as an independent solicitation manager and prepare a report to the Commission that TransWest will include in its post-solicitation compliance filing.<sup>41</sup>

34. TransWest reiterates that it will file an OATT following the Commission's *pro forma* template to provide transmission service on the TWE Project for all capacity not initially allocated in the Open Solicitation process. Further, TransWest asserts that it will comply with the Commission's Standards of Conduct, affiliate rules, and other filing requirements, including Electric Quarterly Reports of its transmission service transactions.<sup>42</sup>

**b. Commission Determination**

35. We acknowledge TransWest's commitments that: (1) non-affiliates will be offered the same rates, terms, and conditions as any affiliate for similar-length TSAs resulting from the allocation; (2) TransWest will maintain separate books and records for the TWE Project, independent of its affiliates' books and records; (3) PA Consulting, as the ISM, will oversee the open solicitation process as an independent solicitation manager and prepare a report to the Commission that TransWest will include in its post-solicitation compliance filing; (4) TransWest will file an OATT following the Commission's *pro forma* template to provide transmission service on the TWE Project for all capacity not initially allocated in the Open Solicitation process; and (5) TransWest will comply with the Commission's Standards of Conduct, affiliate rules, and other filing requirements, including Electric Quarterly Reports of its transmission service transactions.

36. Additionally, we acknowledge TransWest's commitment that, if any affiliate is allocated capacity on the TWE Project, TransWest will, in its post-open solicitation filing, detail the results and describe the process in sufficient detail to demonstrate that no affiliate has been given undue preference, and to show that the treatment of unaffiliated customers is just, reasonable, and not unduly preferential or discriminatory.

37. We accept these commitments as satisfying our affiliate preference concerns, subject to the Commission's approval of TransWest's post-selection open solicitation compliance filing demonstrating that the allocation of the remaining, currently unsubscribed capacity is just, reasonable, and not unduly preferential or discriminatory.

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 24-25.

#### 4. **Factor Four: Regional Reliability and Operational Efficiency**

38. To ensure regional reliability and operational efficiency, the Commission requires that any merchant transmission developer whose project is connected to an RTO or ISO turn over operational control of its project to that regional entity. Merchant transmission projects, like cost-based transmission projects, are also subject to mandatory reliability requirements.<sup>43</sup> Merchant transmission developers are required to comport with all applicable requirements of NERC and any regional reliability council in which they are located.

##### a. **TransWest's Proposal**

39. TransWest states that it cannot assign operational control of the TWE Project to an ISO or RTO because the TWE Project is not located within the footprint of any such entity. Nevertheless, TransWest asserts that it is committed to satisfying all applicable NERC and WECC requirements. TransWest contends that it has completed Phase 2 of the WECC Path Rating Process and has been granted Accepted Path Ratings for the TWE Project's north-to-south capacity. TransWest, as a WECC member, has sponsored the TWE Project within the Path Rating process to demonstrate that the TWE Project complies with all relevant NERC and WECC transmission planning reliability requirements. TransWest commits to completing the WECC Path Rating Process third and final phase when the TWE Project is placed in service. TransWest states that it has and will continue to participate in the regional planning process conducted by Northern Grid, WestConnect, and the California Independent System Operator Corporation (CAISO).<sup>44</sup>

##### b. **Commission Determination**

40. Because the TWE Project is not located in an RTO or ISO, TransWest retains operational control of the transmission lines and responsibility for reliability of the TWE Project. We acknowledge TransWest's commitment to satisfy all applicable NERC and WECC requirements. We thus find that TransWest's proposal meets the regional reliability and operational efficiency requirements, subject to TransWest's compliance with all applicable NERC and WECC requirements. We also acknowledge TransWest's

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<sup>43</sup> See, e.g., *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, *order on reh'g*, Order No. 672-A, 114 FERC ¶ 61,328 (2006).

<sup>44</sup> Transmittal at 25-26.

commitment to participate in regional planning processes conducted by Northern Grid, WestConnect, and CAISO.

**B. Waiver Requests**

**1. TransWest's Proposal**

41. In connection with its request for authority to sell transmission service rights at negotiated rates for the TWE Project, TransWest seeks waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission's regulations, except for sections 35.12(a), 35.13(b), 35.15, and 35.16; (2) the requirement to file Form No. 1 (Annual Report of Major Electric Utilities, Licensees, and Others); and (3) Part 141 of the Commission's regulations relating to forms and reports, except for sections 141.14 and 141.15.<sup>45</sup>

**2. Commission Determination**

42. Because TransWest is proposing to charge negotiated rates, the regulations requiring the filing of cost-based data are not applicable. Therefore, for good cause shown and consistent with our findings for other merchant transmission proposals, we waive the filing requirements of Subparts B and C of Part 35 of the Commission's regulations, except for the requirements of sections 35.12(a), 35.13(b), 35.15, and 35.16.<sup>46</sup>

43. We also grant TransWest's request for waiver of Part 141 (with the exception of sections 141.14 and 141.15) of the Commission's regulations, including the Form No. 1 filing requirement. The Commission has previously granted requests for waiver of the Form No. 1 filing requirement, and has previously granted waiver of the Part 141 requirements to merchant transmission owners in other Commission proceedings.<sup>47</sup> For public utilities with cost-based rates, the information provided in Form No. 1 is necessary to ensure that rates are just and reasonable. However, we note that TransWest's rates will

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<sup>45</sup> *Id.* at 26-27.

<sup>46</sup> *Grain Belt Express*, 147 FERC ¶ 61,098 at P 34; *Hudson Transmission Partners, LLC*, 135 FERC ¶ 61,104, at P 42 (2011); *Tres Amigas LLC*, 130 FERC ¶ 61,207, at P 103 (2010); *Wyo. Colo. Intertie, LLC*, 127 FERC ¶ 61,125, at P 62 (2009) (*Wyo.*); *Linden VFT, LLC*, 119 FERC ¶ 61,066, at P 42 (2007) (*Linden*).

<sup>47</sup> *Grain Belt Express*, 147 FERC ¶ 61,098 at P 35; *Neptune Reg'l Transmission Sys., LLC*, 139 FERC ¶ 61,110, at P 12 (2012); *Wyo.*, 127 FERC ¶ 61,125 at P 65; *Linden*, 119 FERC ¶ 61,066 at P 44; *Mont. Alberta. Tie, Ltd.*, 116 FERC ¶ 61,071, at P 66 (2006).



be negotiated rather than cost-based and, as discussed above, the TWE Project will not have captive customers. Therefore, we find that it is appropriate to grant TransWest's request for waiver of the Form No. 1 filing requirement. We note that TransWest must continue to maintain its books and records in accordance with the Commission's accounting and record retention requirements.<sup>48</sup>

The Commission orders:

(A) TransWest's request for authority to sell transmission rights at negotiated rates is hereby granted, subject to condition, as discussed in the body of this order.

(B) TransWest's requested waivers are hereby granted, as discussed in the body of this order.

(C) TransWest's capacity allocation process for the TWE Project's capacity is hereby accepted, conditioned upon TransWest filing with the Commission a compliance filing within 30 days after the close of the open solicitation process, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>48</sup> See 18 C.F.R. pts. 101 & 125 (2020).